



STATE OF NEW JERSEY

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

In the Matter of Gustavo Gutierrez,
Fire Captain (PM1051V),
Paterson

Examination Appeal

CSC Docket No. 2019-2482

ISSUED: June 13, 2019 (RE)

Gustavo Gutierrez appeals his score for the oral portion of the promotional examination for Fire Captain (PM1051V), Paterson. It is noted that the appellant passed the subject examination with a final average of 82.070 and ranks 52nd on the resultant eligible list.

This two-part examination consisted of a written multiple-choice portion and an oral portion. Candidates were required to pass the written portion of the examination, and then were ranked on their performance on both portions of the examination. The test was worth 80 percent of the final score and seniority was worth the remaining 20 percent. Of the test weights, 31.35% of the score was the written multiple-choice portion, 22.49% was the technical score for the evolving exercise, 7.53% was the supervision score for the evolving exercise, 4.28% was the oral communication score for the evolving exercise, 19.23% was the technical score for the arriving exercise, 7.53% was the supervision score for the arriving exercise, and 7.59% was the oral communication score for the arriving exercise.

The oral portion of the Fire Captain examination consisted of two scenarios: a fire scene simulation with questions designed to measure the knowledge of safe rescue tactics and procedures to safeguard citizens, supervision of fire fighters and the ability to assess fire conditions and hazards in an evolving incident on the fireground (evolving); and a fire scene simulation designed to measure the knowledge of safe rescue tactics and procedures to safeguard citizens, supervision of firefighters and the ability to plan strategies and tactics based upon a building's structure and condition (arriving). Knowledge of supervision was measured by

questions in both scenarios, and was scored for each. For the evolving scenario, candidates were provided with a 15-minute preparation period, and candidates had 10 minutes to respond. For the arriving scenario, a five-minute preparation period was given, and candidates had 10 minutes to respond.

The candidates' responses were scored on technical knowledge and oral communication ability. Prior to the administration of the exam, a panel of Subject Matter Experts (SMEs) determined the scoring criteria, using generally approved fire command practices, firefighting practices, and reference materials. Scoring decisions were based on SME-approved possible courses of action (PCAs) including those actions that must be taken to resolve the situation as presented. Only those oral responses that depicted relevant behaviors that were observable and could be quantified were assessed in the scoring process.

Candidates were rated on a five-point scale, with 5 as the optimal response, 4 as a more than acceptable passing response, 3 as a minimally acceptable passing response, 2 as a less than acceptable response, and 1 as a much less than acceptable response. For each of the scenes, and for oral communication, the requirements for each score were defined.

For the evolving scenario, the appellant scored a 1 for the technical component, a 5 for the supervision component, and a 5 for the oral communication component. For the arriving scenario, the appellant scored a 3 for the technical component, a 5 for the supervision component, and a 5 for the oral communication component. The appellant challenges his score for the technical component of the arriving scenario. As a result, the appellant's test material, video, and a listing of PCAs for the scenarios were reviewed.

The arriving scenario involved a report of fire on the first and second floor of a row home, where there were people squatting inside when the fire broke out. Question 1 asked candidates to use proper radio protocols to perform an initial report upon arrival, and question 2 asked for specific actions to take after the initial report.

For the arriving scenario, the assessor assigned a score of 3, using the "flex rule," and noted that the candidate failed to report possible victims inside upon arrival, which was a mandatory response to question 1. It was also noted that he missed the opportunity to indicate that it was a rowhouse in question 1. On appeal, the appellant states that he indicated that it was a rowhouse.

Regarding the flex rule, mandatory responses are responses that are requirements for a performance to be acceptable (a score of 3). Sometimes, a candidate states many additional responses but does not give a mandatory

response. The flex rule was designed to allow the SMEs to assign a score of 3 to candidates who fail to give a mandatory response but who provide many additional responses. However, the SMEs cannot provide a score higher than a 3 in those cases. All mandatory responses must be given in order for a performance to be acceptable, whether there is one mandatory response or five of them. It is not assumed that candidates receive a score of 5 which is then lowered for lack of responses. Performances that include mandatory responses get a score of 3, and those without mandatory responses get a score of 1 or 2, unless the flex rule is used. Additional responses only increase a score from 3 to 4 or from 3 to 5.

In reply, a review of the appellant's presentation indicates that the appellant stated that the fire building was a rowhome in question 1. However, this was an additional response, not a mandatory response. His additional responses contributed to his score, but as the appellant did not indicate in his initial report that there were possible victims inside, which is a mandatory response, his score cannot be higher than a 3 pursuant to the flex rule.

CONCLUSION

A thorough review of the appellant's submissions and the test materials indicates that the decision below is amply supported by the record, and the appellant has failed to meet his burden of proof in this matter.

ORDER

Therefore, it is ordered that this appeal be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 12th DAY OF JUNE, 2019



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